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No. 80-1207

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DAVID RUSK, MAYOR, et al., *Appellants,*

v.

JOSEPH ESPINOSA, et al., *Appellees.*

On Appeal From The United States Court Of Appeals For The Tenth Circuit

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MOTION TO AFFIRM

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

QUESTION PRESENTED

Whether the Court of Appeals properly held that a city solicitation ordinance violated the Free Exercise Clause of the First Amendment when that ordinance defined certain of the Church's religious ministries as secular and required licensing of the Church's door-to-door fund-raising activities for those religious ministries.

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MOTION TO AFFIRM

Appellees, Joseph Espinosa, Charles Shobe, Morton L. Dunkin and the General Conference of Seventh-day Adventists, pursuant to Rule 16 of the Rules of the Supreme Court of the United States move that the final judgment and decree [1] of the United States Court

[1] Opinions Below: The opinion of the Court of Appeals appears in the Appendix to the Appellants' Jurisdictional Statement. It has not been reported.

The Memorandum opinion of the United States District Court for the District of New Mexico also appears in Apellants' Appendix and, similarly, is not reported.

of Appeals for the Tenth Circuit be affirmed on the ground that the judgments below were correct and the questions on which the decision of the cause depends are so unsubstantial as not to warrant further argument. Appellees believe that the decisions of the Court of Appeals and the District Court below correctly applied the long-standing rulings and teachings of this Court, thus making further argument unnecessary.

STATEMENT OF THE CASE

I. Nature of the Case

The Seventh-day Adventist Church (Church) and certain of its members brought this civil action to enjoin enforcement of the Albuquerque, New Mexico (City) municipal Ordinance 72-1975. The Church believes that this solicitation Ordinance, if enforced against its religious programs, would result in a denial of fundamental rights guaranteed by the religion clauses of the First Amendment to the United States Constitution, as made applicable to the States and its political subdivisions by the Fourteenth Amendment.

II. Course of the Proceedings

On December 12, 1978, the Church, a worldwide religious organization, filed a Complaint, and a Motion for a Temporary Restraining Order, seeking declaratory and injunctive relief against enforcement of the Ordinance. The Church acted to prevent the deprivation of those rights guaranteed by the First Amendment of the United States Constitution. On December 18, 1978, the Federal District Court approved a joint Stipulation Granting a Temporary Restraining Order, thus permitting the Church to carry out its annual Ingathering

program (described hereinafter and the subject of this litigation). The City's Answer was received on January 3, 1979.

Facts before the District Court were contained in a Stipulation of Facts [2] Briefs, and legal memorandums were filed. The Court received oral argument on January 26, 1979.

Reaching a decision on the merits, the trial court on March 22, 1979, permanently enjoined the City from enforcing its Ordinance against the Church's Ingathering program.

The City appealed the District Court decision to the Court of Appeals for the Tenth Circuit, which affirmed the judgment.

III. Statement of the Relevant Facts

The church program conducts an annual door-to-door solicitation in Albuquerque and throughout most of the world. This program is known as Ingathering, and attempts to reach every home with a spiritual message. The Church views mankind as being a physical, mental and spiritual entity. And, to meet such needs, "... these Christian people feel they must minister not just to one, but to all aspects of his being. Thus, the humanitarian work fostered by the Adventists . . . comprehends a healing ministry for the sick, the feeding of the hungry, the clothing of the naked, the education of children and youth." (See Stip. Fact 6.) The Church considers this activity a form of evangelism,

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[2] Reference to this Stipulation in this Brief will be abbreviated as follows: (Stip. Fact No. —).

including the solicitation of contributions to support the Church's programs. Each home contacted by individual Church members is offered Bible course enrollments.

The money received by the Church supports various medical, community services, educational, and evangelical activities. The Church also provides food, clothing, shelter and money for the needy; summer camps for disadvantaged youths; counseling, health services, and educational programs with the funds solicited during its yearly Ingathering program. (Stip. Fact 8.)

During the Fall of 1978, in preparing their annual campaign of Ingathering in Albuquerque, the Church contacted the City Attorney's office to determine whether the Ordinance would apply to these religious activities. Attorneys for the City of Albuquerque advised the Church that the ordinance did in fact apply. The Church, while willing to register with the City, refused to apply for and obtain a permit as required by the Ordinance (Amended Stip. Facts, p. 1). The City under the Ordinance determined the Church's Ingathering program and activities funded thereby to be secular. (See Stip. Fact 5 and 8.)

The Church has consistently maintained that its Ingathering program and the welfare ministries funded thereby are a part of its religious mission and constitute a part of its biblical duty. (Stip. Fact 12.) The action of the City through its Ordinance has a chilling effect on the ministry of the Church and subsequently interferes with the program of the Church and its members in their door-to-door evangelistic contact with the citizens of Albuquerque (Stip. Fact 13.).

ARGUMENT

The facts of this case were presented to the Court by stipulation.[3] This has eliminated many of the problems often faced by a trial court in making its determination of the sensitive constitutional questions raised when provisions of a legislative act affect rights guaranteed under the religion clauses of the First Amendment to the United States Constitution. The Church maintains that any factual issues which might have been present were thus eliminated by the stipulation of facts entered into.

The city claims that the door-to-door evangelistic outreach of the Seventh-day Adventist Church was subject to its solicitation ordinance (Stip. Fact 4). The city contends that this church program was not exempt because the Church's activities did not meet the cities definition of religion.

There is no question that the city ordinance as applied to the Seventh-day Adventist door-to-door evangelistic outreach program is a prior restraint of that Church's activities and that of its members because: (a) under Section 7 [4] of the ordinance all solicitation is forbidden until a permit has been issued by the city solicitation review board unless the activity comes within one of the poorly-defined exceptions; (b) the board under Section 11(A) of the city ordinance can delay the granting or denying of a permit for up to 45 days. Thereafter under Section 11(C) of the ordinance an applicant denied a permit has 20 days during which to

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[3] The Stipulations appear in the Appendix, hereto, p. 1a, infra.

[4] The Albuquerque City Ordinance, No. 72-1975 here at issue is set out in the Appellants' Jurisdictional Statement, Appendix, pp. 28a-45a.

file a petition for reconsideration. This subsection states that the applicant is then entitled to a hearing but no provision of the ordinance indicates when that hearing must be held, thus further delaying for some undetermined time the ultimate decision concerning the granting or denying of a permit; (c) Under section 6(D) the board has the open-ended authority to "request any information necessary for its investigation;" (d) Under section 5(B) the city solicitation review board has apparent unbridled discretion to authorize or deny an application for a permit; (e) Under Section 11(C), if the board in its wisdom but without any legislative guidance decides to deny such permit application, the only redress afforded the applicant is to petition for reconsideration with a required hearing. It is not clear, however, what happens after the hearing.

The above provisions do not comport with this Court's decision in *Cantwell* v. *Connecticut,* 310 U.S. 296, 305 (1940), which teaches that solicitation statutes must not "unreasonably obstruct or delay the collection of funds." Here we have a classic example of a prior restraint of a constitutionally protected right.

Cantwell, id. at 305, found that the vesting of power in a licensing officer to decide if an activity is a religious one constitutes a censorship of religion which, is a denial of liberty protected by the First Amendment. As such, this form of licensing is an unconstitutional prior restraint. See *Near* v. *Minnesota,* 283 U.S. 697 (1931).

The Court in *Cantwell* did conclude however that its decision striking down a state solicitation statute in no way prevented a state from protecting its citizens against fraud by penal laws through the use of a

limited identification requirements. See 310 U.S. at 306 and 307.

In *Murdock* v. *Pennsylvania,* 319 U.S. 105 (1943), this Court distinguished between registration requirements and licensing taxes. It implicitly approved a regulatory system which required solicitors to "give their names, addresses and other marks of identification to the authorities." Id. at 113. The District Court in its Memorandum Opinion observed that the Seventh-day Adventist Church had agreed that it would voluntarily register with the City and provide the City with identification of the type contemplated in *Cantwell.* Such information would establish the identity and authority of a solicitor. (See Appellants' Appendix p. 21a). The Church agreed to provide the following information as a reasonable alternative to the City's ordinance:

(1) Name, address, telephone number of local church.

(2) Name, address, telephone number of local pastor.

(3) Name, address, telephone number of layperson in charge of Ingathering campaign.

(4) Name, address, telephone of local conference official who supervises Ingathering.

(5) Sample of literature to be distributed.

(6) Rationale for the Ingathering campaign:

(a) To place Seventh-day Adventist literature in every home;

(b) To enroll interested persons in a Bible correspondence course;

(c) To offer everyone an opportunity to give a freewill offering to help support the

worldwide work of the Seventh-day Adventist Church;

(d) To pray for individuals in their homes; and

(e) To interest individuals in the Seventh-day Adventist Church.

(7) Sample of identification carried by volunteer workers.

(8) Dates and, where necessary, hours of the door-to-door evangelism.

The City argues that the purpose of the Ordinance is "to protect its citizens from fraudulent and deceptive practices in connection with charitable solicitations." (See Appellants' Jurisdictional Statement, p. 7). And, this Court has held that a state may indeed protect its citizens from fraudulent solicitation. Such protection, however is available through existing penal laws and by registration and not the licensing of a religous activity. *Cantwell* v. *Connecticut, supra; Murdock* v. *Pennsylvania, supra.*

This Court's continuing critical scrutiny of the means applied by the state for the protection of its citizens against fraud in the area of door-to-door solicitation recognizes that the solicitation of funds is an activity fully within the protection of the First Amendment. *Village of Schaumburg* v. *Citizens for a Better Environment,* 100 S.Ct. 826, 833-35 (1980); *Murdock* v. *Pennsylvania, supra* at 109-11; *Cantwell* v. *Connecticut, supra* at 304-05; *Schneider* v. *New Jersey,* 308 U.S. 147, 160 (1939); and *Lovell* v. *Griffin,* 303 U.S. 444, 450 (1938).

It follows that any law which subjects First Amendment expression to a prior restraint of governmental permission bears "a heavy presumption against its validity." *Southeastern Promotions, Ltd.* v. *Conrad,* 420 U.S. 546, 558 (1975), quoting *Bantam Books, Inc.* v. *Sullivan,* 372 U.S. 58, 70 (1963).

In *Sherbert* v. *Verner,* 374 U.S. 398 (1963), a three-step balancing test was articulated to resolve conflicts between First Amendment religion-clause rights and state interests. The test seeks to determine: 1) whether there is a burden imposed on the exercise of religion? *Id.* at 403. 2) If such a burden is found, whether the infringement is justified by a compelling governmental interest? *Id.* at 406. And 3) if a compelling governmental interest does exist, whether there is any less intrusive alternate means available to meet the state's objective? *Id.* at 407. This Court has made clear that any governmental interest would not overbalance a free exercise claim. The interest must be shown to involve a grave and paramount state concern. *Id.* at 406.

The "least intrusive alternative" aspect of the *Sherbert* test is not a new First Amendment concept. It had been previously enunciated in *Shelton* v. *Tucker,* 364 U.S. 479 (1960). There the Court ruled that even though the governmental purpose may have been legitimate and substantial, such a purpose could not be achieved by means that infringed upon fundamental personal liberties should a less intrusive method of resolving the governmental concern be available. "[T]he breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Id.* at 488.

In *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), citing *Sherbert*, this Court held that there must be a state interest of sufficient magnitude to override an individual claim to protection under the free exercise of religion clause of the First Amendment: "The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can over-balance legitimate claims to the free exercise of religion." *Id.* at 215.

In a case involving either governmental infringement of free exercise rights or state intrusion into church institutional concerns, a heavy burden of proof falls upon the government to establish the existence of a compelling state interest in the absence of any less violative method of attaining the government's objective.

It is clear that the government cannot meet this heavy burden imposed by *Sherbert* by simply asserting the existence of some generally recognized interest, such as fraud. For as Professor Tribe has stated:

> In applying the least intrusive alternative-compelling interest requirement, it is crucial to avoid the error of equating the state's interest in denying an exemption with the state's usually much greater interest in maintaining the underlying rule or program for unexceptional cases. Only the first interest—that in denying an exemption—is constitutionally relevant when an exemption is sought.

L. Tribe, *American Constitutional Law* 855 (1978).

In other words specific governmental restrictions or limitations on First Amendment liberties can only be justified by the government establishing the existence

of a compelling governmental interest which is unachievable by a less restrictive pinpointed alternative. Even a legitimate governmental purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. *Shelton, supra* at 488; *Elrod* v. *Burns,* 427 U.S. 347, 362 (1976).

The Court in *Schaumburg, supra,* observed that although a municipality has a legitimate interest to prevent fraud in door-to-door charitable solicitations, it must do so by narrowly drawn regulations, designed to serve those interests without unnecessarily interfering with First Amendment freedoms.

The City of Albuquerque, has exempted the solicitation programs of certain religious organizations from the application of its licensing requirements. The Ordinance attempts to define what the City perceives to be religious. In so doing it requires the Seventh-day Adventist Church's door-to-door evangelistic outreach program to be licensed. This consequence follows even though the philosophy, objectives, and methods of the Church's Ingathering program, constitute a religious ministry for the sick, for the hungry, for clothing of the naked, and the education of children and youth.

The Church considers its Ingathering program a direct response to Christ's directives as found in Matthew 25:31-46. The annual Ingathering appeal is part of a many-sided evangelistic program fostered by the Church to reach its neighbors. It is a spiritual ministry intended for every home which includes a visit and *Bible* course enrollment; the presentation of a brochure explaining the work of the church, and giving the pub-

lic an opportunity to contribute to the Church's worldwide program. (Stip. Fact 6).

Judge Barrett of the Tenth Circuit, in his dissenting opinion, while acknowledging that defining "religion" for the purpose of First Amendment rights is "one of the most trying and vexing tasks found in constitutional law" (Appendix to Appellants' Jurisdictional Statement, p. 11a), nevertheless sought a definition by means of "common sense approach." (Appendix to Appellants' Jurisdictional Statement, p. 12a). Any such approach, however, leads to a constitutional quagmire. Judge Barrett argued that "a distinction must be drawn, . . . between those activities characteristic of secular life, historically of primary and compelling concern of the community and government, which are also pursued by religious organizations." (Appellants' Appendix to Jurisdictional Statement, p. 13a). In fact, the Church's Ingathering program, as mandated by Christ's own words, represents a 2000-year Christian ministry that has only recently been abandoned by many churches and secularized by government.

The state may not nullify the protection afforded religion and religious practices, observances, and beliefs by itself performing similar services that have been stripped of their religious meaning. This point is illustrated here. One of the uses of Ingathering funds received by the Church, which the city has claimed to be secular, is support of the extensive parochial educational system operated by the Seventh-day Adventist Church. The City contends that the educational activities of the Church would come within the meaning of "secular" as the term is defined in the Ordinance and

interpreted by the city (Stip. Fact, p. 8), presumably because the state operates a school system. This Court, however, has long recognized the religious character of a church's educational program and found it a protected religious activity. *NLRB* v. *Catholic Bishop of Chicago,* 440 U.S. 490 (1979). It has recognized the nature of an educational system which although generally serving educational needs of society, are established for different purposes. Public schools serve purely educational needs and satisfy the secular requirements of society. Parochial schools, however, also inculcate religious values and have a distinctive religious purpose. See *Abington* v. *Schempp,* 374 U.S. 203, 242 (1963) (Brennan, J. concurring opinion).

Education historically has been an important and integral part of religious ministry and is an integral part of the Judeo-Christian religious tradition. A canon attributed to the Sixth Ecumenical Council of Constantinople in 680-81 A.D. required priests to maintain schools for children. J. Bingham, *The Antiquities of the Christian Church,* Book 8, ch. 7, § 12 (1856). In this country several denominations spend large portions of their funds for their educational ministries in providing sectarian education. As this Court noted in *Meek* v. *Pittenger,* 421 U.S. 349, 366 (1975), "the very purpose of many [sectarian] schools is to provide an integrated secular and religious education; the teaching process, is, to a large extent, devoted to the inculcation of religious values and beliefs."

In light of the long line of parochiaid cases decided by this Court, it is difficult to understand how a municiple legislative body, in making a "common sense"

determination as to what is secular and what is religious, could conclude that the solicitation of funds by a church to be used in part for maintaining parochial schools is subject to municipal licensing. Here we see the anomaly of government claiming that the solicitation of funds by a church for its church-operated elementary and secondary schools must be licensed because that aspect of the church's work is secular and not religious. This is illustrative of the difficulty of a legislative body attempting to define on its own what is secular and what is religious.

The Supreme Court has repeatedly insisted that the government cannot examine a religious belief as part of its exercise of police power. *U.S.* v. *Ballard,* 332 U.S. 78 (1944), held that the freedom of religion barred inquiry into the truth or falsity of belief. Similarly this Court has ruled that the government may not decide what is sacreligious. *Joseph Burstyn, Inc.* v. *Wilson,* 343 U.S. 495 (1952). Judicial determination of religious sincerity and status is a most sensitive undertaking. *Gillette* v. *United States,* 401 U.S. 437, 457 (1971), (whether a belief is "truly held" is open to question, the "truth of a belief" is not); *Wisconsin* v. *Yoder, supra* at 219-29 and 235 (sincerety of religious belief demonstrated by conduct); *Founding Church of Scientology* v. *United States,* 409 F.2d 1146, 1162 (D.C. Cir. 1969), *cert. denied,* 396 U.S. 963 (1969) (declining to hold summarily that plaintiff is a religion; claim of religious status is subject to contradiction by showing of insincerity of belief). Thus the City of Albuquerque treads upon dangerous grounds when it attempts to determine that an historic church activity is secular and not religious.

A California jurist has astutely observed that freedom of:

> "... religious thought and action cannot be whittled away by carving out segments of religious activities and relegating them to the realm of secular affairs. If that were permitted, the right or action for a religious purpose could eventually be destroyed by the gradual severance and classification as secular of every activity undertaken to promote the religious purpose." *Gospel Army* v. *City of Los Angeles,* 163 P.2d 704, 719 (1945) (Dissent).

In the instant case the city has offered absolutely no evidence calling into question the sincerity of the Adventist teaching that the church is Biblically required to minister not only to the spiritual but also to the physical needs of humanity. As the Court of Appeals noted, the City argues that the ordinance in question does not require a determination as to what is religious for the purpose of censoring the activity "but merely for imposing reasonable regulations for preventing fraud and other similar conduct." The appeals court was not persuaded by this contention and noted that this Court in *Cantwell* found that an administrative determination as to what was religious is objectionable (Appendix to Appellants' Jurisdictional Statement, p. 8a).

The Court of Appeals recognized that an organization might falsify its purpose. That, however, is a factual question which, on the record, is not faced by this Court. There is not the slightest suggestion that the activities for which the Church receives funds in its Ingathering program are not a bona fide aspect of the Church's religious ministry.

The Ordinance focuses upon the nature of the need served by the expenditure of funds received by the Church, rather than on the nature of the exempt organization. In so doing, it has made given preference to certain church expenditures, and assumed a role of deciding what constitutes religious activity. It has approved the religious programs of some churches while casting a burden on the programs of other churches. Particularly disturbing is the attempt by the City to classify what activity of a church is religious and what is secular. Such a classification does not aid in separating those church activities which may be more susceptible to working fraud upon the citizens of the City. For example, if a church should choose to solicit donations to squander on a lavish church structure, such a church would be exempt from the Albuquerque licensing requirements. If, however, it builds a sectarian school building, provides funds for the operation of a sectarian hospital, or conducts a religiously motivated stop-smoking clinic, it is not exempt, and the City insists on licensing those parts of the church's ministry. The legislative discrimination here involved smacks of "religious gerrymandering," criticized in *Gillette* v. *United States, supra* at 452.

The City contends that the requirements of the ordinance are reasonably related to a legitimate governmental purpose (Appellants' Jurisdictional Statement, p. 8). It is submitted, however, that *Sherbert* v. *Verner, supra,* rejected a rational relationship test in cases involving the free exercise clause of the First Amendment. In *Sherbert,* this Court held that when balancing the interest of the state against free exercise rights "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation, *id.* at

406, citing *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945). Under *Sherbert*, a searching examination of the government's claimed compelling state interest is mandated. The *Sherbert* test may not be met by a mere assertion that a legislative act is reasonably related to a legitimate governmental purpose. See also *Buckley* v. *Valeo*, 424 U.S. 164 (1976); *Gibson* v. *Florida*, 372 U.S. 539, 558 (1963); *NAACP* v. *Button*, 371 U.S. 415 (1936); *Shelton* v. *Tucker*, *supra* at 479; *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958).

The City also argues that its determination, under the Ordinance, that the purpose for which funds are solicited are not "evangelical, missionary or religious" does not render solicitation by a group claiming some religious affiliation unlawful or deny that group the right to disseminate religious views. Here the City contends that if the solicitation Review Board finds in the light of this definition of "secular" that the purpose of the solicitation by a group claiming some religious affiliation is secular, the only consequence of that determination is that the group must obtain a permit and disclose to the public how the money solicited will be used (Appellants' Jurisdictional Statement, pp. 8 & 9). The city, however, treats too lightly the impact of its ordinance requirement. In a case somewhat similar, the Eighth Circuit, in *Valente* v. *Larson*, Nos. 80-1131 and 80-1159 (filed January 7, 1981), found a similar provision in a state statute placed a significant burden upon the groups subject to the act, particularly where, as here, there was an open-ended provision permitting the government to obtain such other information as the government might require.

Requiring a church to go before a governmental agency or official to obtain a "license" to carry out

its religious mission implies and tacitly acknowledges the absolute right of the state to withhold or withdraw that permission. Such authority should never be granted to the state except for the most compelling needs of society and then, only when no less intrusive means is available, then, only with the greatest of procedural safeguards. Conversely, the state should not expect a church to lightly permit the relinquishing of any aspect of its rights to engage in a religious mission. The impeding of a church's religious activities by the state can never be dismissed as a *de minimus* harm excusing the careful application of the *Sherbert* test.

It must be remembered that the activity which the city here seeks to license—the door-to-door ministry of the Adventist Church—is beyond question, religious in nature. There has been no evidence introduced even hinting that the Ingathering program, which the City claims must be subject to its licensing requirement, is a secular activity. The city has never advanced the argument that the Church is not carrying out its religious mission when it conducts this program. The city only claims that the funds which are spent to provide food, clothing, shelter and money for the needy, summer camps for disadvantaged youth, counseling, health services and its parochial educational program are for a secular purpose. Yet the spending is not what is licensed, rather it is the religious ministry.

Apparently Judge Barrett in his dissenting opinion would apply a test unknown to this Court that the religious activities of a church or its members may be restrained by the government so long as that restraint was not "undue" or "excessive." (Appendix to Jurisdictional Statement, p. 13a). This, of course, repudiates

the least intrusive alternative/compelling state interest test of *Sherbert*. It also seems to jettison all of the decisional law on prior restraints on First Amendment rights. See *Southeastern Promotions, Ltd.* v. *Conrad, supra* at 558; *ISKCON* v. *Rockford*, 558 F.2d 263, 271 (7th Cir. 1978); *Bantam Books* v. *Sullivan, supra.*

Furthermore, any restraint on the exercise of Appellees' First Amendment rights must also supply adequate safeguards of procedural due process to insure available, corrective review of a decision to deny or limit those freedoms. The procedures set forth in Section 11(A) of the Ordinance fall short of the due process requirements. *Freedman* v. *Maryland*, 380 U.S. 51 (1965). *Freedman* requires that the government bear the burden of justifying restraints on First Amendment activities. Thus a First Amendment licensor must grant or deny a permit: within a specific time; the licensing scheme require the licensor either to issue a permit or to institute, quickly, a judicial proceeding for an injunction to restrain the proposed activities; the licensor shall assume the burden of proof in such proceedings; and that the licensing scheme must assure a "prompt judicial decision" reviewing any "interim and possible erroneous denial of a license." *Id.* at 59. The Albuquerque Ordinance fails to meet almost all of these requirements.

The parties stipulated that the Seventh-day Adventist Church offered to register and give certain information as a reasonable alternative to the licensing requirement. The city failed to present any evidence demonstrating why this less intrusive alternative to the licensing requirement would not have met whatever compelling governmental concern there might exist. Pertinent to this failure of proof on the part of the

City is that the City made no showing why its citizens would have been subject to any greater chance of fraud when the Church used a portion of the funds for its educational and welfare ministries rather than exclusively for paying its ministers or building churches, or some other purpose which the City perceives to be within its own unique and novel definition of "religion."

CONCLUSION

The decision of the Cuort of Appeals properly rests on long standing Supreme Court precedent. Appellees respectfully request this Court, for the reasons herein stated, to affirm that judgment.

Respectfully submitted,

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